

Financial Services User Group (FSUG)

Brussels, 19.03.2015

Consultation of the Joint Committee of the European Supervisory Authorities (EBA, ESMA, EIOPA) GUIDELINES FOR CROSS-SELLING

About FSUG

The Financial Services User Group (FSUG) is an expert group set up by the European Commission following the core objective “to secure high quality expert input to the Commission’s financial services initiatives from representatives of financial services users and from individual financial services experts”. The mandate of the group is to:

- advise the Commission in the context of the preparation of legislative acts or other policy initiatives affecting users of financial services, including consumers, retail investors and micro-enterprises;
- provide insight, opinion and advice concerning the practical implementation of such policies;
- proactively seek to identify key financial services issues which affect users of financial services;
- where appropriate, and in agreement with the Commission, liaise with and provide information to financial services user representatives and representative bodies at the European Union and national level, as well as to other consultative groups administered by the Commission, such as the European Consumer Consultative Group, the Payment Systems Market Expert Group, the European Securities Markets Expert Group and the Expert Group on Financial Education.

General remarks

The FSUG welcomes the opportunity to comment on the draft Guidelines for cross-selling practices.

Retail financial services are ubiquitous in consumers’ daily lives and assist consumers in achieving important goals, such as saving money for retirement, investing in education of their children, purchasing movable and immovable property, covering against risk. However, the retail financial services sector is far from functioning properly. One of the crucial issues is related to cross-selling practices, which are too often not designed in the interest of consumers, limit competition and consumer choice. Such practices are widespread across EU Member States.

Please find below the FSUG responses to the consultation questions, where we present our views on cross-selling and the draft Guidelines. Although the FSUG supports the majority of the Guidelines, we consider their impact will likely be rather limited since sectorial legislation recently adopted does not put virtually any limitation on cross-selling practices.

Competent authorities should report regularly to the European Supervisory Authorities (ESAs) on the enforcement and impact of these Guidelines and the Joint Committee of the ESAs should assess whether further measures are necessary.

Q1: Do you agree with the general description of what constitutes the practice of cross-selling?

The FSUG agrees with the general description of cross-selling.

Besides clear distinction between bundling on the one hand, and tying and conditional offering on the other hand, it would be relevant to also refer to cases where bundling tends to replace tying with

practically the same effects, i.e. where bundling is a de facto tying¹.

Q2: Do you agree with the identified potential benefits of cross-selling practices?

Consumers are usually not in a strong position to negotiate individually the offers and contracts proposed to them. The conditions offered to them are most often on a ‘take it or leave it’ basis.

In theory, it is certain that if a large number of consumers oppose terms and conditions that are proposed to them, it could have an effect on the financial industry’s practices. This would require that consumers have full awareness of the impact of conditions imposed on them and have enough time to thoroughly assess and compare different market offers.

When referring to the potential benefits of cross-selling, it is important to distinguish between tying and bundling. Indeed, the above presented potential consumer benefits (financial benefits, convenience and wider choice) are achievable through bundling, provided that the consumer has a real choice to purchase each component of the package separately. On the other side, we hardly see how tying can benefit consumers – in our view, the benefits are exclusively for financial service providers. According to a recent study carried out by Deloitte Center for Financial Services²: *“Cross-selling has become a strategic priority for many banks in recent years. It is well known that the incremental cost of selling to current customers is generally much lower than to new customers. Recognizing this, banks have, over the years, invested heavily in cross-selling to increase wallet share. (...) Yet, it appears, many banks may be far from realizing the full potential of cross-selling.”*

As regards the assessment of potential financial benefits for consumers, it should be strongly nuanced that, not only costs at the time of purchase, but overall costs for the consumer in the long run must be considered. This implies taking into account potential tariff increases for individual services included in the package as well as switching costs for the consumer. See also our comments under question 3.

As regards item c) *Access to a wider range of products*, we do not have any positive concrete example in mind. Not making a product available separately seems more like harmful tying than a benefit for the consumer.

Q3: Do you agree with the identified potential detriment associated with cross-selling practices?

Overall, the FSUG agrees with the identified potential detriment.

Once again, there is a need to specify that potential detriment associated with tying and bundling may vary. Indeed, sectorial legislation on retail financial services sees tying practices as particularly harmful, distorting competition and negatively affecting consumers’ purchasing options and mobility, while bundling leaves choice to the consumer³.

The Guidelines should make reference to behavioural biases and the fact that firms exploit consumer biases to design and market financial services in a way which does not always meet consumer interests and needs. EU national regulators and supervisors should take behavioural insight into consideration in their policies, to make sure that retail financial products available to consumers meet their needs and expectations. They should monitor the application of the product governance policy adopted by financial institutions, if any, and not hesitate to intervene in case of consumer detriment (product intervention powers).

The consumer organisations’ responses to the Commission consultation on tying and other potentially unfair commercial practices (2010) contains numerous examples of cross-selling practices in different Member States and their potentially negative impact on consumers⁴. For example, bank account packages that include overdraft facility and credit card on a take it or leave it basis; ancillary products

¹ See findings of the Commission study on “Tying and other potentially unfair commercial practices in the retail financial services sector”, 2009: http://ec.europa.eu/internal_market/consultations/docs/2010/tying/report_en.pdf

² <http://www2.deloitte.com/content/dam/Deloitte/dk/Documents/financial-services/Krydssalg.pdf>

³ See Recital 81 of MiFID II, Recital 24 of the Mortgage Credit Directive, Recital 24 of the Payment Accounts Directive, Recital 41 of the draft Insurance Mediation Directive II (Council text).

⁴ BEUC response to EC consultation on tying and other potentially unfair commercial practices in retail financial services sector, April 2010: <http://www.beuc.eu/publications/2010-00300-01-e.pdf>

(bank account, multi-risk insurance contracts) tied with mortgage credit; “optional” insurance bundled with credit.

In France, consumer organisations regularly point out that bank accounts sold in "package" put forward by the banks, are often more expensive than services bought separately. In addition, many packages include services consumers do not need⁵.

In UK, consumer organisations have reported examples of tying of retail investment services: high interest rates are given on deposits sometimes tied with complex products as structured products or structured deposits sometimes with high charged product.

In Belgium, many banks make a bundled financial offer with mortgage credit which generally provides a lower interest rate, as long as the different ancillary services, like home insurance, are maintained. Even if the offer gives the borrower a total advantage at the moment the contract is signed, this is not necessarily the case a few years later. The link which is created between those different contracts prevents the borrower from taking advantage of the market variations. If the consumer decides to switch to another insurance company for his home insurance in order to get a better deal, the lender may impose an increase in the loan interest rate, as is often stipulated in the mortgage contract terms. There is no reason to allow a lender to decide which home insurance consumers need to protect their property, the lender may only require that the property be covered by home insurance until the end of the mortgage; an ancillary service provided by the lender may be acceptable if there is an objective benefit to the consumer.

In Belgium, consumer organisations have also reported a case where clients were teased with a very high interest rate on a short term deposit if they invested a same amount in a UCITS or a structured product.

In some Nordic countries, access to the best interest rate for a mortgage credit requires borrowers to invest in UCITS, shares or savings accounts. Such practices are detrimental for consumers as they are stimulated to borrow a higher amount to be able to invest⁶.

BEUC response to the EC consultation in 2010 proposed the following non exhaustive list of criteria that could be used to determine whether a cross-selling practice is unfair or not:

- Do consumers have freedom of choice?
- Are prices transparent?
- Can consumers make comparison?
- Can consumers switch easily?
- What is the impact of the practice on the duration of the contractual relationship between a consumer and a financial service provider?

All the legislative proposals on retail financial services published following the EC consultation contained provisions related to tying and bundling. Although, as already mentioned above, all those texts (MiFID II, MCD, PAD and draft IMD II) recognise the harmful impact of tying on competition and consumers, none of them has ultimately introduced a ban on that practice. In general, firms are only required to inform the consumer whether the service can be purchased separately and provide the price of individual items included in the package. Only the Mortgage Credit Directive instructs Member States to allow bundling and prohibit tying practices, but this general provision has been considerably weakened by a Member State option allowing all kinds of tying justified on the grounds of providing additional security to the creditor in the event of default.

Q4: Please comment on each of the five examples above, clearly indicating the number of the example to which your comment(s) relate.

The FSUG agrees with the above examples of consumer detriment. See also our examples above.

⁵ <http://www.clcv.org/nos-enquetes/enquete-banque-2015.html>: “le choix du package s’avère à quelques exceptions près peu judicieux pour notre consommateur qui utilise peu de services. Il n’est également intéressant qu’une fois sur deux pour notre consommateur moyen ».

⁶ BEUC position on the draft MiFID II proposal, January 2012: <http://www.beuc.eu/publications/2012-00064-01-e.pdf>

Q5: Please comment on the proposed guidelines 1 and 5 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Q6: Please comment on the proposed guidelines 2, 3, 4 and 6 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Q7: Please comment on the proposed guideline 7 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

The FSUG welcomes Guidelines 1-7. That being said, we believe that information disclosure alone will not ensure fair treatment of consumers by providers. The root cause of the problem must be addressed, i.e. clear rules on tying and bundling practices are needed. As already explained above, since the sectorial legislation does not put virtually any limitation on cross-selling, the impact of these Guidelines is likely to be rather limited and will not change current business practices in countries where no specific national legislation exists in this area.

The Guidelines may potentially help to enhance consumer experience with bundling practices, especially where bundling is a de facto substitute for tying.

Q8: Please comment on the proposed guideline 8 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

It is unclear how the proposed Guideline 8 would be implemented in practice and the illustrative examples do not help understanding different scenarios. For example, in the Mortgage Credit Directive, a rationale behind cross-selling is creditors' risk coverage, and not consumer benefit. Then, how suitability/appropriateness assessment would fit here?

Another example, MiFID II Art 24(1) provides that "... when providing ... ancillary services to clients, an investment firm should act ... in accordance with the best interests of its clients..." Yet, it is not specified how product tying can be in accordance with the best interests of consumers.

Q9: Please comment on the proposed guidelines 9 and 10 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

The FSUG fully supports Guideline 9.

Guideline 10 is too general and raises concerns with regard to its efficiency. In fact, sectorial legislation already referred to above has addressed conflicts of interest in the remuneration structures of sales staff in a very fragmented way. For example, MiFID II provisions on sales incentives are quite vague and unlikely to rule out conflicts of interests.

Illustrative example 3 is inappropriate: if a bonus is directly linked to a sales target, hence it will fluctuate depending on whether or not the target has been achieved. This example should be reworded to state that firms should not make bonus payments dependant on the achievement of sales targets or thresholds for bundled packages, but to reward staff that for instance provide good customer services or deal with consumer enquiries promptly.

In our view, there should be a horizontal approach to conflicts of interest: remuneration of firms' staff and intermediaries should be at least product-neutral, i.e. not related to the type and volume of products sold.

Q10: Please comment on the proposed guideline 11 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Guideline 11 needs to be more detailed. The meaning of "disproportionate penalties" should be clarified. For example, in Belgium when a bundled financial offer is made for a mortgage credit, it

generally offers a lower rate, as long as the different contracted services are maintained, e. g. mortgage credit with home insurance. Even if the offer gives the borrower a total advantage at the moment the contract is signed, this is not necessarily the case a few years later. The link which is created between those different contracts prevents the borrower from taking advantage of the market opportunities.

Q11: Please provide any specific evidence or data that would further inform the analysis of the likely cost and benefit impacts of the guidelines.